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Supreme Court
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CHARLES ELMORE

No. 185

In the Supreme Court of the United States

OCTOBER TERM, 1931

BALTIMORE AND PHILADELPHIA STEAMBOAT COMPANY AND MARYLAND CASUALTY COMPANY, PETITIONERS

v.

AUGUSTUS P. NORTON, DEPUTY COMMISSIONER FOR THE THIRD COMPENSATION DISTRICT OF THE UNITED STATES, AND EMIL BRUNO GUBE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR RESPONDENT AUGUSTUS P. NORTON, DEPUTY COMMISSIONER

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BALTIMORE AND PHILADELPHIA STEAMBOAT COMPANY and Maryland Casualty Company, petitioners

v.

AUGUSTUS P. NORTON, DEPUTY COMMISSIONER FOR the Third Compensation District of the United States, and Emil Bruno Gube

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR RESPONDENT AUGUSTUS P. NORTON, DEPUTY COMMISSIONER

The Government has no interest in the merits of this controversy and therefore does not file a brief in reply to the petition.

The instant proceedings were instituted by a suit in equity brought in the United States District Court for the Eastern District of Pennsylvania under Section 21(b) of the Longshoremen's and Harbor Workers' Compensation Act of March 4, 1927,

c. 509, 44 Stat. 1424, 1436 U. S. C., Sup. IV, Title 33, Sec. 921, to set aside an award made by a Deputy Commissioner of the United States Employees' Compensation Commission on account of an injury sustained by the respondent Gube while working as an employee of the petitioner steamboat company in navigable waters of the United States. Gube fell and sustained an injury to his left arm, which totally disabled him for thirty-four weeks and resulted in permanent disability to the extent of 40% of the use of his left arm. The Commissioner determined that Gube was entitled to receive two-thirds of his average weekly wages for 34 weeks and to receive two-thirds of his average weekly wages for 40% of 280 weeks. The total award was $24.04 a week for 146 weeks.

The dispute concerns the construction of Section 8 of the Act and affects only the amount of compensation to be awarded for an injury which temporarily totally disables the employee and also permanently partially disables him.

The District Court dismissed the bill of complaint, approving the construction adopted by the Deputy Commissioner. The Circuit Court of Appeals had some doubt whether the case was not moot, in view of the fact that the steamboat company had "paid its employee the compensation awarded, as it was bound to do, without awaiting an appeal." (R. 36.) It held, however, that as the insurer was a party and "still desires and has a right to de-

mand that the question of proper payment as affecting its liability to its principal be decided," the court should not dismiss the case as moot. It concluded that the construction adopted by the Deputy Commissioner was correct.

Although the United States Attorney filed a brief in the Circuit Court of Appeals in behalf of the Commissioner, arguing that this construction was correct, we do not conceive that the United States has such an interest in this controversy as to require it to take any position in the case at this time.

We print as an appendix the Act of May 4, 1928, providing for appearance by the District Attorney in cases of this character.

Respectfully submitted.

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Solicitor General.

CLAUDE R. BRANCH,
Special Assistant to the Attorney General.

J. FRANK STALEY,
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Attorneys.

AUGUST, 1931.

APPENDIX

The Act of May 4, 1928, c. 502, 45 Stat. 490 (U. S. C., Sup. IV, Title 33, Sec. 921), reads as follows:

> *Be it enacted* * * * That in any court proceedings under section 21 or other provisions of the Longshoremen's and Harbor Workers' Compensation Act it shall be the duty of the district attorney of the United States in the judicial district in which the case is pending to appear as attorney or counsel on behalf of the United States Employees' Compensation Commission or its deputy commissioner when either is a party to the case or interested, and to represent such commission or deputy in any court in which such case may be carried on appeal.

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